IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9586 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ARVINDBHAI BHIMJIBHAI BHANUSHALI

Versus

STATE OF GUJARAT

Appearance:

M/S THAKKAR ASSOC. for Petitioner

MR HL JANI, AGP for Respondent Nos.1 to 3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 20/10/2000

ORAL JUDGEMENT

By way of this Special Civil Application under Article 226 of the Constitution of India, the petitioner has challenged the order of detention dated 31-07-2000 passed by the District Magistrate, Kutch-Bhuj in exercise

of powers under Section 3(2)) of the PBMA Act, 1980 with a view to prevent the petitioner from black marketing essential commodities like kerosene and acting in any manner prejudicial to the maintenance of supplies of essential commodities like kerosene essential to the community.

2. Challenging the order of detention, learned advocate for the petitioner has raised various contentions and ultimately he has restricted his arguments only on ground nos.(h) to (v) by contenting that bill no.125 as stated in para 13 is not supplied to him though same has been relied upon by the authority while passing the order of detention against the present petitioner and according to him, the petitioner is prejudiced in making an effective representation and hence, the order of detention may be quashed and set aside.

3. I have verified the same and more particularly item no.25. It appears that item no.25 which has been supplied by the detaining authority along with the grounds of detention shows that bill no.125 has not been supplied by the detaining authority to the detenu which has been specifically contended by the petitioner in ground (u) on page 14 of the petition. Learned AGP for the State has fairly admitted the same.

4. It has been held in a judgment reported in 1982 S.C. 696 in the case of Mohd. Zakir Vs. Delhi Administration and Ors. at head note as under:

"Detention-Documents relied on by authorities not supplied with grounds of detention-Detention is illegal."

It has been further held by the Apex Court as under:

" It is manifest that the question of demanding the documents is wholly irrelevant because it is the constitutional mandate which requires the detaining authority to give the documents relied on or referred to in the order of detention pari passu the grounds of detention in order that the detenu may make an effective representation immediately instead of waiting for the documents to be supplied with."

It is the duty of the authority to supply copy of the statements and documents with the detention order. Here in this case, item no.25 which has been supplied by the

authority with the grounds of detention does not contain copy of bill no.125, though relied upon by the authority in passing the impugned order of detention. Therefore, there is infraction of safeguards provided under the provisions of Art.22(5) of the Constitution of India and the petitioner has been deprived of knowing the grounds and making effective representation against the order of detention. Since the petitioner succeeds only on this point learned advocate for the petitioner does not press any other points.

5. In view of the above, the petition is allowed. The order of detention dated 31-7-2000 passed against the petitioner-detenu is hereby quashed and set aside. The detenu-Arvindbhai Bhimjibhai Bhanusali is ordered to be set at liberty forthwith, if not required to be detained in any other case. Rule is made absolute accordingly with no order as to costs.

(R.P.DHOLAKIA,J.)

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